

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 James Barrow, et al.,

10 Plaintiffs,

11 v.

12 New Residential Mortgage LLC, et al.,

13 Defendants.
14

No. CV-22-08160-PCT-DLR

ORDER

15
16 Before the Court is Plaintiffs' motion for a temporary restraining order ("TRO").
17 (Doc. 2.) Plaintiffs ask the Court to enjoin a trustee's sale of real property located in
18 Arizona that they claim to own. That trustee's sale is scheduled for 10:00 am on
19 September 12, 2022. Plaintiffs ask the Court to issue this TRO without notice to
20 Defendants. Plaintiffs' motion will be denied because they have not satisfied the
21 requirements for obtaining a TRO without notice.

22 The bedrock elements of due process are notice and a meaningful opportunity to
23 be heard. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). A TRO without notice
24 necessarily deprives the opposing party of both. For this reason, a litigant seeking a TRO
25 without notice to the opposing side must provide a sufficiently compelling reason why
26 due process must be dispensed with. To that end, the Federal Rule of Civil Procedure set
27 out specific requirements for obtaining a TRO without notice.

28 The court may issue a temporary restraining order without
written or oral notice to the adverse party or its attorney only

1 if:

2 (A) specific facts in an affidavit or a verified complaint
3 clearly show that immediate and irreparable injury, loss, or
4 damage will result to the movant before the adverse party can
5 be heard in opposition; and

6 (B) the movant's attorney certifies in writing any efforts made
7 to give notice and the reasons why it should not be required.

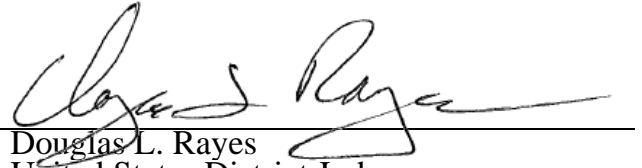
8 Fed. R. Civ. P. 65(b)(1). In essence, the Court may issue such an order only if the
9 movant could not have notified the opposing side far enough in advance to allow them to
10 be heard without causing irreparable harm. This may happen, for example, when notice
11 to the opposing side would itself cause irreparable harm, or when the movant learns of
12 the need for a TRO at the eleventh hour and therefore cannot, as a practical matter,
13 provide sufficient advance notice to the opposing side.

14 Plaintiffs vaguely allude to discussions they claim to have had with Defendants'
15 attorney(s) about this matter. But they fail to explain in any concrete terms the efforts, if
16 any, they made to notify Defendants of this motion for a TRO. What's more, there
17 appears to be no good explanation for Plaintiffs' decision to wait until the eleventh hour
18 to file their request. According to Plaintiffs, a notice of the forthcoming trustee's sale
19 was recorded on June 9, 2022. Yet Plaintiffs waited three months—and until the very
20 last business day before the trustee's sale is set to occur—to file this lawsuit and their
21 motion for a TRO. Had Plaintiffs filed this lawsuit earlier—even as little as week
22 earlier—Defendants easily could have been afforded a meaningful opportunity to be
23 heard in opposition. Plaintiffs fail to offer a cogent explanation for not filing this motion
24 sooner, and Defendants should not be deprived of their due process rights simply because
25 Plaintiffs chose to run out the clock. On this record, the Court cannot conclude that
26 notice should not be required.¹ Therefore,

27 ¹ Although failure to satisfy Rule 65(b)(1)'s threshold requirements is a sufficient
28 basis for denying relief, the Court also flags a potential jurisdictional problem. Plaintiffs
allege that the Court has subject-matter jurisdiction over this dispute pursuant to 28
U.S.C. § 1332, which “confers jurisdiction on federal courts when each defendant is a
citizen of a different state from each plaintiff.” *Dolch v. United Cal. Bank*, 702 F.2d 178,
181 (9th Cir. 1983). According to the complaint, Plaintiffs each are Arizona citizens.
The Court therefore has subject-matter jurisdiction only if no defendant is also a citizen
of Arizona. One of the defendants, New Residential Mortgage, LLC (“New

1 **IT IS ORDERED** that Plaintiffs’ application for a TRO without notice (Doc. 2) is
2 **DENIED.**

3 Dated this 9th day of September, 2022.

4
5
6
7
8 
9 Douglas L. Rayes
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 Residential”), is a limited liability company. A limited liability company “is a citizen of
26 every state of which its owners/members are citizens.” *Johnson v. Columbia Props.*
27 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Plaintiffs allege that New Residential
28 is “a foreign company with its principal place of business located in Delaware,” but they
do not allege any information about the citizenship of New Residential’s
owners/members. The Court therefore lacks sufficient information to determine whether
New Residential is or is not an Arizona citizen.